



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,687	09/17/2003	David M. Skinko	Q137-US6	6258
31815 7590 08/05/2010 MARY ELIZABETH BUSH QUALLION LLC P.O. BOX 923127 SYLMAR, CA 91392-3127				
EXAMINER				
HODGE, ROBERT W				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
08/05/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/665,687

**Applicant(s)**

SKINLO, DAVID M.

**Examiner**

ROBERT HODGE

**Art Unit**

1795

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: 72 and 76  
Claim(s) rejected: 43-45, 67-71, 73-75 and 77-89  
Claim(s) withdrawn from consideration: 90

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

/Robert Hodge/  
Primary Examiner, Art Unit 1795

Continuation of 11, does NOT place the application in condition for allowance because: Applicants' response filed 7/21/10 is non-responsive because the status identifier for claim 90 is incorrect and should recite that claim 90 is "withdrawn" and therefore applicants' response after final is not entered.

In response to applicants' traversal arguments, the office action dated 7/13/10 is a Final Office action. Furthermore applicants state that claim 90 provides structure because it recites "the tab is connected to the second end cap such that..." and because it depends on claim 68. Although claim 90 is a dependent claim, claim 90 does not recite any additional structure that was not recited in a previous claim from which it depends. Claim 43 already recites that the tab is immobilized to the second end cap, in this instance immobilized and connected are synonyms and as such claim 90 does not further limit the structure of claims 43 and 68. Furthermore the body of claim 90 recites "such that the second end cap can be removed from the case and with the electrode assembly still positioned in the case the second end cap be positioned perpendicular to an end of the case with the tab extending through the end and the case being located between the tab and the second end cap". No where in the quoted recitation is there any structure listed or any limitation that further limits the structure of the claims from which claim 90 depends, said recitation is a recitation of the disassembly process of the battery and therefore because claim 90 only recites limitations that are directed to disassembly of the battery claim 90 does not further limit any of the claims from which it depends and it is also directed to a different statutory class to a method of disassembling a battery and is therefore properly withdrawn from consideration as being directed to an invention that is independent and distinct from the invention that was originally claimed. Applicants remarks with regards to rejection of claim 89 under 35 U.S.C. 112, first paragraph are not persuasive for the reasons set forth in page 5 of the Final Office action dated 7/13/10.

The remainder of applicants remarks are reiterative of the remarks submitted on 4/27/10 and are not persuasive for the very detailed reasons of record set forth in the Final Office Action dated 7/13/10 on pages 2-4 in the "Response to Arguments" section.